

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-7049

ORIGINAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X
GEORGE M. OSSERMAN, :

Plaintiff-Appellant, :

-against- :

BANK LEUMI TRUST COMPANY OF NEW YORK, :

Defendant-Respondent. :

----- X

On appeal from the United States
District Court for the Southern
District of New York

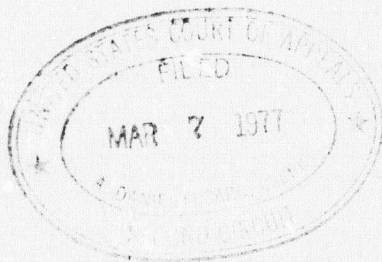
APPELLANT'S APPENDIX

THEODORE F. TONKONOGY,
Attorney for Plaintiff-
Appellant

150 East 58th Street
New York, N.Y. 10022
Tel.: (212) 486-0535

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DOCKET ENTRIES

JUDGE WYATT

76 Civ 2032 GEORGE M. OSSERMAN VS. BANK LEUMI TRUST CO. OF NEW YORK

Date	NR.	Proceedings
05-05-76	1.	FILED COMPLAINT, ISSUED SUMMONS.
05-13-76	2.	Filed summons with marshals return. SERVED: BANK LEUMI TRUST CO OF NEW YORK 5-7-76.
06-09-76	3.	Filed stip & order that the time of deft to move etc, is extended to 6-10-76. Wyatt, J.
07-14-76	4.	Filed stip & order that the defts time to move or answer etc, is extended to 7-29-76, Ward, J.
07-30-76	5.	Filed defts Notice of Motion for an order dismissing this action on the ground that the complaint fails to state a claim etc, rtble on 8-20-76.
07-30-76	6.	Filed defts memorandum of law in support of said motion.
08-04-76	7.	Filed stip & order that the motion of deft is extended to 10-22-76, Wyatt, J.
10-13-76	8.	Filed stip & order that the motion of deft Bank Leumi Trust Co. of New York to dismiss the complaint is extended to 12-17-76. Wyatt, J.
12-16-76	9.	Filed Pltffs memorandum in opposition to motion to dismiss the complaint.
12-20-76	10.	Filed Pltffs affidavit in opposition to defts motion to dismiss the complaint, etc, as indicated.
12-21-76	11.	Filed defts Reply memorandum of law as indicated.
1-10-77		Filed memo end. on motion dated 7-30-76 for above reasons it cannot be said that deft Bank failed to exercise the "reasonable" degree of care required of by sec 9-207 of Code.... Defts motion is granted and the Clerk is directed to enter judgment in favor of deft dismissing the action for failure of complaint to state a claim upon which relief can be granted. So ordered Wyatt J. m/n
1-12-79	12.	Filed judgment that deft Bank Leumi Trust have judgment against Plff G. Osserman dismissing complaint. Judgment ent. Clerk 1-12-77. m/n
1-21-77	13.	Filed notice of appeal to the USCA form judgment of 1-12-77 by J. Wyatt. m/n
2-7-77	14.	Filed Pltffs. undertaking for costs on appeal in the sum of \$250.00 Fidelity and Deposit Co. of Maryland.
2-14-77	15.	Filed Notice that the Original record on appeal has been certified and transmitted to the U.S.C.A.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

GEORGE M. OSSERMAN,

Docket #76CIV2032W

Plaintiff,

NOTICE OF APPEAL

-against-

BANK LEUMI TRUST COMPANY OF NEW YORK,

Defendant.

-----X

Notice is hereby given that George M. Osserman, the plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment dismissing the complaint herein, entered in this action on the 12th day of January, 1977.

Dated: January 17, 1977

THEODORE F. TONKONOGY, P.C.

BY:


Attorney for Plaintiff
150 East 58th Street
New York, N.Y. 10022
Tel: 212 486-0535

JUDGMENT APPEALED FROM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GEORGE M. OSSERMAN

Plaintiff

-against-

BANK LEUMI TRUST CO. OF NEW YORK

Defendant
-----X

:

:

:

:

:

:

76 Civil 2032 (IBW)

JUDGMENT

Defendant having moved the Court pursuant to Rule 12(b)(6), of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Inzer B. Wyatt, United States District Judge, and the Court thereafter on January 10, 1977, having handed down its memorandum decision granting the said motion, and directing the Clerk to enter judgment in favor of the defendant, it is,

ORDERED, ADJUDGED and DECREED: That defendant BANK LEUMI TRUST CO., OF NEW YORK, have judgment against plaintiff GEORGE M. OSSERMAN dismissing the complaint.

Dated: New York, N.Y.
January 12, 1977

Raymond F. Burghardt
Clerk

DECISION OF JUDGE WYATT

GEORGE M. OSSERMAN, Plaintiff,
-v-
BANK LEUMI TRUST CO. OF NEW YORK,
Defendant.

76 Civ. 2032

This is a motion by defendant Bank to dismiss the action for failure of the complaint to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6)

1.

The action was commenced on May 5, 1976 by plaintiff George Osserman against Bank Leumi Trust Co. of New York, formerly known as The First Israel Bank and Trust Co. of New York. The complaint avers that on May 28, 1970, plaintiff (George) and one Gloger entered into a written agreement of guaranty with the Bank under which George and Gloger guaranteed payment of sums (up to \$50,000) lent by the Bank to Heritable Security Corporation and under which George and Gloger each deposited as collateral for his guaranty, his "shares" in a limited partnership known as Womig Associates.

It is averred that in July of 1970, George and Gloger entered into an agreement, one of the terms of which was that if George should fail to pay the loan, Gloger would have the right to purchase the entire collateral on foreclosure by the Bank; and that a copy of this agreement between George and Gloger was delivered to the Bank.

It is further averred that on March 26, 1971, counsel for George informed the Bank that if the loan was repaid, the "shares" supplied as collateral by George should be returned to him.

It is averred that Gloger later paid the loan (exactly when is not made clear; perhaps on April 12, 1971); that on April 12, Gloger requested that, having paid the loan, the Bank should release all the collateral, including the "shares" of George to Gloger "as sole owner"; and that the Bank released and delivered the "shares" of George to Gloger.

2.

It appears that Gloger has since refused to return the "shares" of George to him. The value of the "shares" is said to be greatly in excess of the amount of the loan. The complaint states that George brought an action against Gloger in the United States District Court for the District of

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Massachusetts for return of the "shares" in January of 1972; and that such action has not yet been completed.

Plaintiff avers that it was the wrongful release and delivery of the "shares" by the Bank to Gloger which made the Massachusetts action necessary. He demands, among other things, that defendant be ordered to "redeem" the "shares" from Gloger, that defendant be directed to render a full accounting of the "shares", dividends and other payments thereon since April 12, 1970 (presumably, this should be 1971), and that defendant be assessed the costs of the Massachusetts litigation conducted by plaintiff against Gloger.

3.

The plaintiff's allegation of wrongful delivery of the "shares" to Gloger appears to be based on a claimed violation of a fiduciary duty owed by the Bank as pledgee to George as pledgor. Plaintiff contends that, under the guaranty agreement between him and Gloger and the Bank, the sole right of disposition of the collateral given to the Bank was to sell it on ten days notice to George and Gloger. Plaintiff's Memorandum in Opposition to Motion to Dismiss Complaint at 4. Moreover, plaintiff alleges that the Bank had merely written a letter to Gloger and him demanding payment, but had not "elect[ed] to foreclose", which, under the terms of the bilateral agreement between Gloger and George would have given the Bank the right to sell the collateral to Gloger. (Complaint at 2-3) Finally, plaintiff argues that the letter which the Bank had Gloger sign, stating that he was only taking the collateral under the guaranty agreement and not as purchaser, cannot serve to absolve the Bank of the knowledge that Gloger intended to take the shares as owner. Thus, plaintiff concludes, defendant violated its duty under Section 9-207 of the Uniform Commercial Code (McKinney's 1964) to "use reasonable care in the custody and preservation of collateral in his possession".

4.

Although plaintiff quotes extensively language describing the fiduciary duty of trustees and pledgees, he does not refer specifically to any decisions involving joint guarantors such as here. The Bank relies heavily on a number of pre-Code cases for the proposition that a guarantor, upon payment of the debt, possesses a right, enforceable by the courts, to an assignment by the creditor to all collateral securities held for the debt. Townsend v. Whitney, 75 N.Y. 425 (1878); Niagara Co. Nat. Bank v. La Port, 233 App. Div. 501, 253 N.Y.S. 433 (4th Dept. 1931). Such rights arise not only upon payment of a judgment rendered by a court against all sureties, Niagara Co. Nat. Bank v. La Port, cited above, but also upon the simple

payment by a co-guarantor to the creditor, Kirby v. Barlow, 33 Misc.Rep. 254, 68 N.Y.S. 323 (Sup. Ct., N.Y.Co. 1930), aff'd 60 App. Div. 630, 70 N.Y.S. 1141 (2d Dept. 1931). Refusal to surrender collateral might even lead to release of the guarantor. National Sav. Bank v. Fernac Corp., 241 App. Div. 204, 271 N.Y.S. 836, 839-840 (3d Dept.), aff'd 266 N.Y. 443 (1934)

Although neither party points to decisions involving this issue arising under the Code, both refer to Section 9-504 itself in support of their positions. Subsection (5) of that Section states that a

" . . . person who is liable to a secured party under a guaranty . . . and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Article."

Defendant Bank contends that this provision destroys any argument that its only course of action was to "elect to foreclose" on the "shares" and then to sell them pursuant to U.C.C. Section 9-505, and that it acted unreasonably by instead transferring the collateral to the co-guarantor, Gloger.

Plaintiff responds by pointing to the Practice Commentary to Section 9-504(5) which states that a financial institution, which has transferred collateral pursuant to a repurchase agreement with the dealer who had originally transferred the collateral to it,

" . . . May . . . remain responsible for compliance with the compulsory resale provision (U.C.C. § 9-505(1) and Practice Commentary thereunder) or other requirements of Part 5 of this article, notwithstanding that the dealer has paid it off. The provision that the transferee thereafter has the rights and duties of the secured party does not clearly say that the financial institution is relieved of the duties." (emphasis supplied)

As is indicated, this statement can best be described as tentative. The Official Comment does not refer to the subsection at all. The Practice Commentary itself states that the principal purpose of the subsection was to deal with dealer repurchase agreements. Thus, the possibility that a financial institution may remain liable to the debtor in that situation may have no application whatever to the quite different situation involving a pledgee and two co-guarantors. Since a co-guarantor had the right, under pre-Code law, to take possession of the collateral once he had paid the loan, Kirby v. Barlow, cited above,

and since "(u)nless displaced by the particular provisions of this Act, the principles of law and equity . . . shall supplement its provisions", U.C.C. § 1-103 (McKinney's 1964), it would not have been unreasonable for the Bank to conclude that Gloger had a right to possession of the collateral, even if only as an assignee.

The defendant had also been informed of an agreement between the two guarantors that if plaintiff did not pay the loan, Gloger could "purchase the whole of the Womig collateral" (complaint ¶2). Plaintiff makes much of the fact that the Bank did not "elect to foreclose" but only demanded payment, and that plaintiff had, subsequent to the agreement, informed the Bank that upon payment, plaintiff's shares should be returned to him, and not given to Gloger. Perhaps it was in recognition of this apparent conflict between the two guarantors that the Bank refused to permit Gloger to take the collateral as a purchaser, but only, as appeared to be his right, as an assignee.

For the above reasons, it cannot be said that defendant Bank failed to exercise the "reasonable" degree of care required of it by Section 9-207 of the Code.

The defendant's motion is therefore granted and the Clerk is directed to enter judgment in favor of defendant dismissing the action for failure of the complaint to state a claim upon which relief can be granted.

SO ORDERED.

Dated: January 10, 1977

INZER B. WYATT
United States District Judge

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

GEORGE M. OSSERMAN, :

Plaintiff, :

-against- :

BANK LEUMI TRUST CO. OF NEW YORK, :

Defendant. :

-----X

COMPLAINT

DOCKET NO.

Plaintiff for his complaint, by Theodore F. Tonkonogy, P.C.,
his attorney, alleges:

1. Upon information and belief, at all the times herein mentioned, the defendant was and still is a banking corporation organized and existing under and by virtue of the laws of the State of New York, and has its principal place of business in the City, County and State of New York.

2. Plaintiff is a citizen of the State of Massachusetts.

3. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.

4. On May 28, 1970, plaintiff and one Seymour Gloger ("Gloger") entered into a written agreement of guaranty with defendant, then known as First Israel Bank and Trust Co. of New York, under which plaintiff and Gloger guaranteed payment of sums lent by defendant to Heritable Security Corporation up to \$50,000,

and under which plaintiff deposited as collateral security for his guaranty, his limited and general partnership shares in a limited partnership known as Womig Associates (the "Shares"); a copy of which guaranty agreement is annexed hereto as Exhibit A.

5. Prior to the said guaranty, Exhibit A, and at the time thereof, plaintiff and Gloger were law partners and also equal owners of Heritable Security Corporation.

6. In July 1970, plaintiff and Gloger entered into a written agreement dissolving their law partnership, their partnership in Heritable Security Corporation and their partnership in a Massachusetts partnership known as Medical Management Services Co., paragraph 15 of which provided as follows:

"Osserman agrees that the outstanding loan of \$30,000 made by First Israel Bank and Trust Company of New York to Heritable was for the benefit of Osserman individually and Medical Management. Osserman has agreed to pay said loan, together with accrued interest and charges monthly as they fall due and fully, on or before December 30, 1970. For the purpose of collateralizing and guaranteeing payment of the said loan, Osserman agrees that in the event that he shall fail to meet the obligations herein set forth with respect to the aforesaid \$30,000 loan, and the bank shall elect to foreclose on the Womig interests assigned to it, Gloger shall have the right to purchase the whole of the Womig collateral, including Osserman's interest therein, by payment to the bank of the amount sought on said foreclosure. Upon such payment by Gloger, no other act or deed by Osserman shall be necessary to transfer full ownership of said Womig interest to Gloger."

A copy of said agreement was delivered to defendant.

7. On March 26, 1971, counsel for plaintiff wrote to

defendant advising it that if the aforesaid loan is repaid, the Shares must be returned to plaintiff. A copy of said letter is annexed hereto as Exhibit B.

8. Gloger paid off the loan balance of about \$26,000, and, in an attempt to usurp ownership of the Shares, handed defendant a letter, a copy of which is annexed as Exhibit C, which apprised defendant that Gloger was claiming that he was "purchasing" the Shares and became the owner of them.

9. Although the defendant refused to accept Exhibit C and demanded and received from Gloger the statement annexed as Exhibit D, it did release and deliver the Shares to Gloger.

10. Gloger thereupon asserted that he was the owner of the Shares, although he had no right, title, or interest as owner in or to them.

11. Prior to the payment of the loan balance by Gloger, the defendant had only written a letter demanding payment of the balance due. It did not "elect to foreclose" on the Womig shares it held as collateral, it did not "foreclose" on them; and there was no "foreclosure". Gloger did not "purchase" the Shares in a "foreclosure" or otherwise.

12. Although the defendant advised Gloger by letter dated April 16, 1971, a copy of which is annexed as Exhibit E, that he had not purchased the Shares from the defendant, by releasing

and delivering the Shares to Gloger and placing them under his dominion and control the defendant thereby directly aided and abetted Gloger in his assertion of ownership of the Shares, and afforded to Gloger the means to assume ownership of the Shares by effecting their transfer to him on the records of Womig Associates and having himself recorded thereon as owner of them.

13. The defendant's failure and refusal to return the Shares to plaintiff and its delivery of the shares to Gloger as aforesaid were in contravention and breach of the agreement, Exhibit A, of the express direction and instruction contained in Exhibit B, and of the rights of the plaintiff.

14. In January, 1972, plaintiff brought an action against Gloger in the United States District Court for the District of Massachusetts for return of the Shares; which action was stayed pending an arbitration, which has dragged on for the past 4 years and has involved extraneous issues, including accountings with respect to the partnerships between plaintiff and Gloger, and has cost and is costing plaintiff thousands of dollars.

15. The wrongful release and delivery of the Shares by the defendant to Gloger as aforesaid caused and impelled plaintiff to engage in said litigation and arbitration, in an attempt to obtain return of the Shares, and to incur the costs thereof.

16. To the knowledge of the defendant at and prior to the

times aforesaid, Womig Associates was the owner of and operated a highly valuable property known as the Scarsdale Bath and Tennis Club.

17. Upon information and belief, in or about 1975, the Scarsdale Bath and Tennis Club owned by Womig Associates, was sold for \$1,100,000, and the amount payable to plaintiff on the Shares from the said proceeds of sale is the sum of \$109,633, which plaintiff has been unable to obtain because of Gloger's aforesaid assertion of ownership of the Shares.

18. Since his aforesaid usurpation of ownership of the Shares Gloger has received, claimed ownership of and retained yearly distributions on the Shares amounting to \$6,500.00 for 1970, \$5,879.65 for 1971, \$7,308.40 for 1972, \$7,684.56 for 1973 and \$7,254.00 for 1974, or a total of \$34,626.61.

WHEREFORE, plaintiff demands judgment against the defendant as follows:

(1) That the defendant be directed to redeem and return to plaintiff, plaintiff's said shares of Womig Associates.

(2) That defendant be directed to render to plaintiff a just and full accounting of the aforesaid property of plaintiff, consisting of his limited and general partnership shares in Womig Associates, received and disposed of by the defendant, and all increments, dividends and other payments thereon since April 12, 1970.

(3) That plaintiff have judgment against the defendant for the amount found due plaintiff on said accounting.

(4) That plaintiff have judgment against the defendant for the amounts expended by plaintiff in connection with the afore-said litigation and arbitration with Gloger.

(5) That plaintiff be awarded interest on all sums awarded to plaintiff from the dates when plaintiff became entitled thereto, together with the costs of this action.

Dated: New York, N. Y.
May 5 1976

SIGNED BY:

S/ Theodore F. Tonkonogy
THEODORE F. TONKONOGY, ESQ.

THEODORE F. TONKONOGY, P.C.
Attorney for Plaintiff
150 East 58th Street
New York, N.Y. 10022
Tel: 486-0535

EXHIBIT A
[Annexed to Complaint]

Agreement by Osserman and Gloger Guaranteeing
Bank Loan to Heritable

Gloger & Osserman

COUNSELLORS AT LAW

SEYMOUR GLOGER
GEORGE M. OSSERMAN

See Fifth Avenue, New York 10020

CHICKERING 4-4000

May 28, 1970

Conrad E. Kluger
President
First Israel Bank & Trust Company
of New York
60 Wall Street
New York, New York 10005

Re: Loan and Security Agreement

Dear Mr. Kluger:

Pursuant to our most recent conversation, and pending the formalization of the several understandings between us through documents which may be prepared by the bank's counsel, this letter, together with the enclosures, is intended to briefly set forth the terms of agreement between us and collateral assignment of all of our interests in Womig Associates.

We, the undersigned, Seymour Gloger and George M. Osserman, in consideration of the establishment of a line of credit for Heritable Security Corporation up to \$50,000.00 do hereby guarantee to you the payment of the principal sum or sums advanced by you to Heritable Security Corporation plus the interest thereon, all in accordance with the agreement of loan or promissory note or notes to be executed to the bank.

Exhibit A, annexed to Complaint
Agreement by Osserman and Gloger Guaranteeing
Bank Loan to Heritable

A-15

Osger & Osger
COUNSELLORS AT LAW

Conrad E. Kluger,
President
First Israel Bank & Trust Co.

-2-

May 28, 1970

Each of us is the owner of a General Partnership interest equal to five percent of Womig Associates plus three and one-quarter shares out of a total of thirty-three limited partnership interests in Womig Associates. In order to secure the guarantee hereinabove set forth, we herewith, assign to you all of our interest in Womig Associates. In the event of default in the payment of any installment of principal or interest as hereinabove provided, and should such default continue for a period of ten days after notice, then you shall have the absolute right, upon the ten days' written notice to each of us, to sell the said interests in Womig Associates and to apply the proceeds from such sale to the payment of the indebtedness plus the reasonable costs incurred by you. Any surplus will be paid over to us, and any deficiency will be paid by us immediately.

We further agree that we will, at our earliest practical conveniences, incorporate Medical Management Services Co., a partnership which we conduct which has its principal office at No. 839 Beacon Street, Boston, Massachusetts, and, upon so doing, it is understood that the loan or loans to Heritable Security Corporation will be transferred to said Medical Management Services Corporation, the within guarantee and collateral assignment to continue in effect for such transferred loan or loans. It is our agreement, further, that we will each transfer to Heritable Security Corporation or to Medical Management Services Corporation, as the case may be, and as a capital investment by each of us, an amount equal to at least one-half of any management fees or distributions which either of us may receive from Womig Associates, and thereupon to immediately reduce the obligation to the bank by the sum of such additional capital investment.

Exhibit A, annexed to Complaint
Agreement by Osserman and Gloger Guaranteeing
Bank Loan to Heritable

A-16

Gloger & Osserman
COUNSELLORS AT LAW

Conrad E. Kluger,
President

-3-

May 28, 1970

First Israel Bank & Trust Co.

We also agree that the outstanding balance of the loan or loans to Heritable Security Corporation or to Medical Management Services Corporation, as the case may be, will be repaid, exclusive of the interest upon the unpaid balance, at an amount equal to ten (10%) percent of the gross income of Medical Management Services Company which amounts will be paid to the bank fifteen (15) days after the end of each calendar month for each month beginning with the month of July, 1970. With respect to the within said gross income, the bank shall have the absolute right to examine the books and records of Medical Management Services Company at any time and, in its discretion, if it should determine that business practices of the company are not being conducted in such a manner that it, the bank, feels secure in its loan or loans, the bank shall have the absolute right, upon failure of the company to adopt business practices recommended by the bank within ten days of written instructions, to demand and receive an assignment of all accounts receivable by Medical Management Services Company, and to convert the relationship into a factoring arrangement which will secure the bank.

In addition to all of the above, within one month of the date hereof, each of us will deliver to the bank an insurance policy in the face amount of \$50,000.00 which policy shall be assigned to the bank as added security for the repayment of the loan or loans.

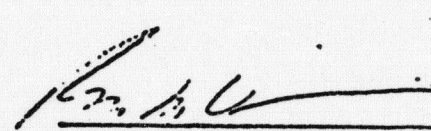
As stated above, this is intended to constitute the agreement among us until such time as it shall be modified in whole or in part by both parties and by either of us.

Exhibit A, annexed to Complaint
Agreement by Osserman and Gloger Guaranteeing
Bank Loan to Heritable

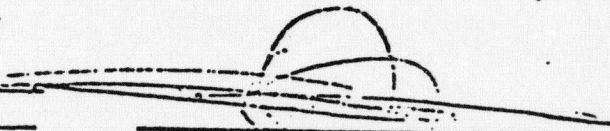
A-17

Our signatures hereinbelow shall constitute our agreement.
Thank you for your cooperation.

Sincerely yours,



GEORGE M. OSSERMAN



SEYMOUR GLOGER

EXHIBIT B
[Annexed to Complaint]

A-18

Letter 3/26/71 from Plaintiff's Counsel
to Defendant

LAW OFFICES OF

(212) 524-9700
CABLE-WEISCEL

WEISMAN, CELLER, ALLAN, SPETT & SHEINBERG

MILTON C. WEISMAN
EMANUEL CELLER
SAMUEL S. ALLAN
MURRAY C. SPETT
ADOLPH KAUFMAN
SYDNEY B. WERTHEIMER
HOWARD S. MODLIN
O. JOHN ROGGE
SAMUEL R. RUDEY
HERBERT S. KELLER
HERBERT R. BERK
IRVING ROZEN
ABRAHAM SHAPIRO
EMANUEL HASER
RICHARD A. OSSERMAN
MILTON WAXENFELD
MORRIS GUTT
GEORGE M. LEHR
STANLEY SCHLESINGER

1501 BROADWAY
NEW YORK, N.Y. 10036

March 26, 1971

First Israel Bank and Trust Company of New York
1412 Broadway
New York, N.Y. 10018

Re: Mr. George Osserman

Gentlemen:

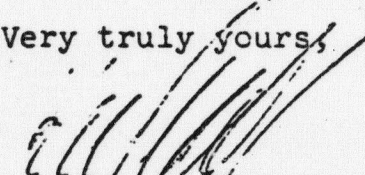
We represent Mr. Osserman whose property we understand you are holding as collateral security for a note of Heritable Security Corp.

Without now questioning your right to continue to hold such security after being advised by Mr. Osserman of his desire for the return thereof, and in the light of your continued modifications and renewals of the obligation therein, it is our wish to make clear to you that no one other than George Osserman is the owner of such property and has any right, title and interest therein.

In the event the loan should be repaid we herewith advise you that such security is to be returned to Mr. Osserman as the owner thereof and to no one else.

The security which you hold is of a value far in excess of the loan and any disposition thereof for less than its true value would be a violation of the Uniform Commercial Code, and Mr. Osserman would be substantially damaged thereby.

Very truly yours,


RICHARD A. OSSERMAN

RAO/peb

EXHIBIT C
[Annexed to Complaint]

Letter 4/12/71 from Gloger to Bank Claiming
Ownership of Osserman's Shares

[Letterhead of]

GLOGER & BARDEY
Attorneys at Law
500 Fifth Avenue
New York, N. Y. 10036

April 12, 1971

First Israel Bank & Trust Company
of New York
1412 Broadway
New York, New York 10018
Attn: Mr. Stuart Weiner
Assistant Vice President

Gentlemen:

Pursuant to your demand, and in accordance with the obligation undertaken by me and subscribed to by George M. Osserman in a letter addressed to Conrad E. Kluger dated May 28, 1970, I provided the funds necessary to satisfy Mr. Osserman's personal obligation to you by purchasing in the interests assigned as collateral for the loan - namely, the stated General Partnership and Limited Partnership interests in Womig Associates. Accordingly, and pursuant to the further specific conditions set forth by you for the aforesaid payment of the entire obligation outstanding, plus accrued interest, I herewith request that you release, transfer and assign all of the collateral and related documents held by you pursuant to the aforesaid letter of understanding or otherwise to me as sole owner thereof without restriction or limitation except as contained in the collateral itself.

Very truly yours,

SEYMOUR GLOGER

SG/as

cc: Conrad E. Kluger
Robert S. Bardey
George M. Osserman

EXHIBIT D
[Annexed to Complaint]

Second Letter of 4/12/71 from Gloger
to Bank Delivered by Gloger to Bank

April 12, 1971

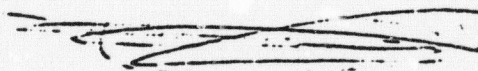
First Israel Bank and Trust Company
of New York
1412 Broadway
New York, New York 10018

Gentlemen:

Please deliver to me all collateral and related documents that were held as security for the loan to Heritable Securities, including those securities that were under the guarantee of George Osserman.

All of the above-mentioned are being released to me in view of my paying Heritable's loan under my guarantee.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Seymour Gloger', with some horizontal strokes extending to the left and right.

Seymour Gloger

EXHIBIT E
[Annexed to Complaint]

A-21

Letter 4/16/71 from Defendant's Counsel
to Gloger

PARKER, CHAPIN AND FLATTAU
530 FIFTH AVENUE
NEW YORK, N. Y. 10036

ROBERT BARBER
JAMES M. CHAPIN
PARKER, CHAPIN AND FLATTAU
ART E. GLOGER
HERBERT L. ROSEDALE
SEYMOUR LEVINE
MARVIN H. KUCKER
SIMON JACOBSON
DONALD P. LEVIN
ALAN J. FISCHL
BARA ABRAVONITZ

JAMES M. JACOBSON
JOHN E. JAY
HERBERT L. ROSEDALE
SEYMOUR LEVINE
MARVIN H. KUCKER
SIMON JACOBSON
DONALD P. LEVIN
ALAN J. FISCHL
BARA ABRAVONITZ

DAVID A. LEFF
MICHAEL A. LEICHTLING
HOWARD J. LEVITZ
THEODORE J. MALVIN
JORDAN M. NEWMAN
PETER M. PEARL
ROBERT M. PEARL
BERNARD PERSAY
MICHAEL J. SWEET
RONIEL SHERMAN
GEOFFREY J. TENCER
STEVEN J. WOHL
JOEL M. WOLOSAY
MARTIN ZELNER

DAVID A. LEFF
MICHAEL A. LEICHTLING
HOWARD J. LEVITZ
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BERNARD PERSAY
MICHAEL J. SWEET
RONIEL SHERMAN
GEOFFREY J. TENCER
STEVEN J. WOHL
JOEL M. WOLOSAY
MARTIN ZELNER

TELEPHONE
986-7200
AREA CODE 212

CABLE ADDRESS
LAWPARK

April 16, 1971

Seymour Gloger, Esq.
500 Fifth Avenue
New York, N.Y. 10036

Re: Heritable Security Corp.

Dear Mr. Gloger:

As counsel for First Israel Bank and Trust Company of New York, I am sending you this letter to confirm our telephone conversation of this morning regarding recent transactions relating to the \$26,000 loan made by the Bank to Heritable Security Corp., evidenced by its corporate note that matured March 17, 1971, guaranteed by you, Robert S. Bardey, George Osserman and Medical Management Services Co., and secured by certain collateral. This will also serve to correct certain inaccurate statements contained in your letter of April 12, 1971 (on your firm letterhead) addressed to the Bank and received by mail on April 14, 1971. (During our telephone conversation you said this letter was inadvertently sent by your secretary).

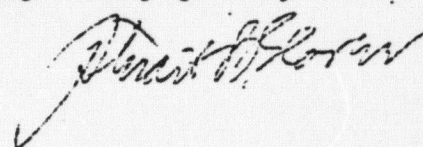
You did not purchase any collateral from the Bank to satisfy Mr. Osserman's personal obligation. On the contrary, pursuant to the Bank's demand, you made payment on April 6, 1971 under your own guarantee. Accordingly, you became subrogated to the Bank's rights and therefore on April 12, 1971, after your personal check had cleared, you called at the Bank where the documents relating to this loan and the collateral were turned over to you against your receipt. At that time you showed the Bank a copy of the letter of April 12th referred to above which, however, was not delivered because of the inaccuracies it contained. Instead, you signed another letter on Bank paper, also dated April 12, 1971, which was prepared at the Bank, a copy of which you retained. That letter expressly stated that payment was made by you under your guarantee and requested delivery of the collateral and related documents.

Seymour Gloger, Esq.

Page 2

As the letter of April 12th on your letterhead indicated that copies were sent to Mr. Kluger of the Bank and also to Messrs. Bardey and Osserman, I am sending them copies of this letter in order that the files of all parties may show the correct facts. A copy is also being sent to Mr. Stuart Weiner of the Bank, who has been handling this loan, and to Richard A. Osserman, Esq., who called me about the matter.

Very truly yours,



SBG/me

ccs: Mr. Conrad E. Kluger
(First Israel Bank and Trust Co.)

Mr. Stuart Weiner
(First Israel Bank and Trust Co.)

Richard A. Osserman, Esq.

Robert S. Bardey, Esq.

Mr. George Osserman

NOTICE OF MOTION TO DISMISS COMPLAINT

A-23

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
GEORGE M. OSSERMAN, :
Plaintiff, : NOTICE OF MOTION
-against- : 76 Civ. 2032
BANK LEUMI TRUST CO. OF NEW YORK, : (IBW)
Defendant. :
- - - - - x

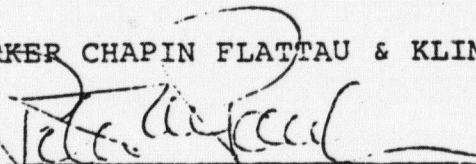
S I R S :

PLEASE TAKE NOTICE that upon the complaint and exhibits annexed thereto, the undersigned will move this Court before the Honorable Inzer B. Wyatt, in Room 501, United States Court House, Foley Square, New York, New York at 2:30 P.M. on August 20, 1976, or as soon thereafter as counsel can be heard for an order pursuant to Rule 12(b)(6) of The Federal Rules of Civil Procedure dismissing this action on the ground that the complaint fails to state a claim upon which relief can be granted and for such other and further relief as to this Court seems just and proper.

Dated: New York, New York
July 29, 1976

Yours, etc.

PARKER CHAPIN FLATTAU & KLIMPL

By: 

A Member of the Firm
Attorneys for Defendant
530 Fifth Avenue
New York, New York 10036
(212) 986-7200

TO:

THEODORE F. TONKONOGY, ESQ.
Attorney for Plaintiff
150 East 58th Street
New York, New York 10022

AFFIDAVIT OF GEORGE M. OSSERMAN IN
OPPOSITION

A-24

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GEORGE M. OSSERMAN,

Plaintiff,

Docket #
76 Civ 2032W

-against-

AFFIDAVIT

BANK LEUMI TRUST CO. OF NEW YORK,

Defendant.
-----X

STATE OF NEW YORK

COUNTY OF NEW YORK ss.:

GEORGE^M OSSERMAN, being duly sworn, deposes and says:

1. I am the plaintiff, and make this affidavit in opposition to defendant's motion to dismiss the complaint. I wish to supply certain factual details, which will corroborate the statements made in my Memorandum in opposition to the motion.

2. My relationship with Seymour Gloger ("Gloger") started in 1951 when we became law partners in New York City. About 1960 we both invested in limited and general partnership shares of Womig Associates ("Womig"), each acquiring about a 12 1/2 % interest. In 1966 we formed Heritable Security Corporation ("Heritable"), which operated an insurance agency in New York. In about 1966 we organized a billing business for doctors in Boston, known as Medical Management Services Co. ("Medical Management"), a Massachusetts partnership, which was operated chiefly

by me and resulted in my moving to Massachusetts about 1969. We were equal partners in these 3 operations.

3. Womig operated a highly profitable club known as the Scarsdale Bath and Tennis Club ("Club"). Reports were rendered by a certified accountant, Irwin Small, of New York City, each year. The 1969 report showed that the total profit for ten prior operating seasons was \$519,986, and valued the club at \$647,033 plus other assets of \$50,103. The profit for the 3 yearly periods prior to 1970, when the loan was made by defendant to Heritable, was: 1967, \$62,099; for 1968, \$89,832; and for 1969, \$90,265.

4. In May, 1970, when we deposited with defendant our respective Womig shares as collateral for the loan to Heritable (Ex. A annexed to complaint), in order to obtain the loan we each submitted a financial statement to defendant in which I and Gloger respectively represented to the defendant that each one's shares were worth \$102,128 and that Womig had a minimum value of \$750,000. The originals of these statements are in defendant's file.

5. In addition to this defendant obtained a Dun & Bradstreet report (a copy of which is annexed hereto as Ex. 1) which showed that the value of the Club was more than \$1,000,000, on June 1, 1970.

6. Each year since commencement of operations I and Gloger had each been receiving, after the end of the prior year's operations, distributions of about \$6,000 to \$8,000, consisting of

managerial fees and profit shares.

7. In July, 1970, at my instance, my partnerships with Gloger were terminated, by a written dissolution agreement prepared by Gloger, (a copy of which is annexed as Exhibit 2). In substance this agreement provided for assignment of the assets and liabilities of the Law Partnership and of Heritable to Gloger and those of Medical Management to me; that I would pay the balance of the Bank loan ; and that the accounts between Gloger and myself would be adjusted to see who owed whom (par 24 of Ex. 2) through accountant's reports to be prepared by the accountants then employed by the entities involved and named in the agreement, to wit, Irving Friedensohn ("Friedensohn") for the Law Partnership and Heritable, and Stone, Leavitt & Shuman ("Leavitt") for Medical Management.

8. In September, 1970 Leavitt rendered the accounting for Medical Management, which showed that Gloger owed me about \$50,000 on the deficit in his capital account. (A copy of the report of capital accounts of Gloger and myself is annexed as Ex. 3)

9. On March 18, 1971, defendant wrote its letter demanding payment of the amount of \$26,000 then owed (a copy of which is annexed as Ex. 4). The other facts as to the letter from my counsel to the Bank to return my Womig shares to me on payment of the loan, and the letter written by Gloger on April 12th advising the defendant of his false claim of "sole ownership" of my Womig

shares by alleged "purchase" which did not occur, are set forth in the complaint.

10. Since my obligation under paragraph 15 of the dissolution agreement was only one of other cross-obligations between Gloger and myself which would result in adjustment of our respective accounts through the accountings to be rendered, and the Leavitt accounting showed that Gloger owed me about \$50,000, I refused to pay the loan, taking the position, and justifiably so, that Gloger owed me about \$30,000 more than this balance on the Bank loan, and therefore, Gloger should pay off the loan.

11. At the time I knew that I did not owe Gloger any money with respect to the Law Partnership and Heritable. This was borne out when Friedensohn was finally forced in 1975 to render his accounting for Gloger as to the Law Partnership and Heritable, which showed that the net charge to me on the Bank loan was \$22,380.81, due to a \$3,619.19 credit to me on my capital accounts with the Law Partnership and Heritable. Furthermore, at the time the defendant demanded payment, there was due to me as the yearly distribution on my Womig shares ^{for the prior year} the sum of \$6,500, which was in Gloger's hands (he was managing partner of Womig and issued the checks for the yearly distributions). Thus Gloger actually paid out of pocket at the time only \$15, 880, against which he owed me about \$50,000 on his capital account with Medical Man-

agement.

12. Thus, at the time the loan was paid off by Gloger, in view of all of the foregoing, defendant had express knowledge that my Womig shares were worth in excess of \$100,000, that the value of Womig exceeded \$1,000,000 (in fact in 1975 it was sold to the village of Greenburgh for \$1,100,000), that on payment of the loan my Womig shares were to be returned to me "and to no one else" (letter of my counsel dated March 26, 1971, Ex. B annexed to complaint), and that, if defendant were to release my Womig shares to Gloger he would usurp ownership of them (letter of Gloger to defendant, dated April 12, 1971, Ex. C annexed to complaint, declaring that by paying the loan he was "purchasing" the collateral and on its release to him he was the "sole owner" of all the collateral).

13. I respectfully submit that in view of these facts the defendant failed in its duty to me as Trustee to protect and preserve my collateral consisting of my Womig shares and failed to guard against this openly avowed and known usurpation of ownership of my Womig shares by Gloger. Under the circumstances thus stated the defendant wrongfully acceded to Gloger's "request" and wrongfully transferred my Womig shares to Gloger.

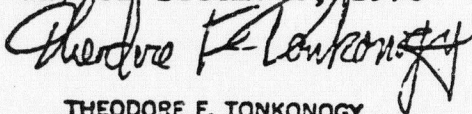
WHEREFORE, deponent respectfully requests that the

motion of defendant to dismiss the complaint be denied.

Sworn to before me this

George M. Osserman

20TH day of December, 1976



THEODORE F. TONKONOGY
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-9355400
Qualified in New York County
Commission Expires March 30, 1978

EXHIBIT 1
[Annexed to Osserman Affidavit]

Dun and Bradstreet Report

~~CONFIDENTIAL~~
DUN & BRADSTREET, INC.

D-U-N-S

DUN & BRADSTREET, INC.

STARTED

RATING

79 47

SCARSDALE BATH &
TENNIS CLUB INCFOR 1 JUNE 1 1970
COUNTRY CLUB

1965

N Q

521 FIFTH AVE
NEW YORK N Y 10017
TEL 212 944-5440FRANK MOROZE, PRES
DIRECTOR: The officer

SUMMARY

PAYMENTS	UNDETERMINED
SALES	\$200,000
WORTH	\$1,000,000
EMPLOYS	60
RECORD	INCOMPLETE

PAYMENTS

On May 27 1970 Frank Moroze, President declined a list of current trade suppliers.

FINANCE

Moroze declined a current financial statement but did state that the subject's total annual revenue is approximately \$200,000 with a net worth in excess of \$1,000,000.

Net worth could not be confirmed in outside quarters.

BANKING

Banking facilities declined.

HISTORY

Reportedly incorporated New York State laws during 1965; search for corporate debts currently underway.

FRANK MOROZE, PRES
SEYMOUR GLOGER, V PRES
WILLIAM WOLFSON, SEC
DIRECTORS: The officers

IRWIN SMALL, V PRES
GEORGE OSSERMAN, TREAS

F. MOROZE, is an Attorney, with his own law practice being conducted at the caption address.

I. SMALL, is a CPA and a principal in Irwin Small Company, CPA's located 432 Park Ave., New York City.

S. GLOGER, is an Attorney; and a partner in the law firm of Gloger & Osserman located 500 Fifth Avenue, New York.

G. OSSERMAN is an Attorney and a partner noted in Gloger & Osserman.

W. WOLFSON, is a Management consultant, operating individually in New York City.

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Active as a Membership corporation, owning and operating a bath and tennis club located on Olympic Road, Ardsley, New York. The Country Club currently has 500 families as members. It is situated on 20 acres located in Westchester County and facilities include eight tennis courts; three swimming pools, three hundred cabanas; and restaurant facilities. The club is opened all year round to its members. 60 employed. LOCATION: The subject maintains headquarters in the law office of Frank Moroz on the 25th floor of a multi story office building located eastside midtown Manhattan. The building is in good condition; the management premises are neat and orderly. In addition the country club facilities are located on Olympic Road, Ardsley, New York.
6-1 (875 38) T81 U

THIS REPORT MAY NOT BE REPRODUCED IN WHOLE OR IN PART IN ANY FORM OR MANNER WHATSOEVER.

BEST COPY AVAILABLE

EXHIBIT 2
[Annexed to Osserman Affidavit]

Agreement Dissolving Partnerships Between
Osserman and Gloger

AGREEMENT entered into this 26th day of July
by and between GEORGE M. OSSERMAN, residing at 50 Longwood Avenue,
Brookline, Massachusetts (hereinafter referred to as "Osserman"),
SEYMOUR GLOGER, residing at Taconic Road, Ossining, New York
(hereinafter referred to as "Gloger") and ROBERT S. BARDEY,
residing at 64 East 86th Street, New York, N. Y. (hereinafter
referred to as "Bardey").

W I T N E S S E T H :

WHEREAS, Gloger and Osserman have been continuously
associated as partners in the practice of law since 1951 under
the name and style of Gloger & Osserman, and Bardey was admitted
to the partnership on or about April 1, 1970 pursuant to a
written agreement, the terms of which are incorporated herein
by reference; and

WHEREAS, the parties are associated as partners or
stockholders or hold beneficial interests in various business
enterprises in the State of New York and Commonwealth of Massa-
chusetts; and

WHEREAS, it is the intention of the parties to this

agreement to provide for the withdrawal of Osserman from the law partnership; of Gloger and Bardey as partners from Medical Management Services Company; for the transfer and assignment of Osserman's interest in Heritable Security Corporation; and to settle and make an account to each other of the various business enterprises and law partnership, and, in particular, the drawing accounts of the parties.

NOW, THEREFORE, in consideration of the premises, it is mutually agreed as follows:

1. Osserman has withdrawn from the law partnership effective July 1, 1970.

2. Effective as of his date of withdrawal, Osserman assigned and transferred to Gloger and Bardey, jointly, all his right, title and interest in and to all law partnership assets, including, but not limited to the leasehold to the premises located at 500 Fifth Avenue, New York, N. Y., bank balances, accounts receivable, claims, furniture, fixtures, supplies, equipment, library, correspondence, records, books of account and any other partnership assets not enumerated herein.

3. Gloger and Bardey do hereby assume all the debts and obligations of the law partnership and undertake to hold

Osserman harmless from any debt or liability of the partnership; provided, however, that in the event recovery is had against the partnership based on an act of negligence, malpractice, breach of fiduciary relationship or conversion, that partner adjudged to have committed any of the acts previously enumerated shall save the partnership and other parties harmless.

4. Osserman warrants and represents that he has not contracted any debt or obligation on behalf of the law partnership, nor collected or discharged any account or claim due the partnership except as either recorded on the books of the partnership or as set forth in Schedule "A" attached hereto.

5. The books of the partnership are closed as of July 1, 1970 and an accounting shall be prepared by Irving Friedensohn in accordance with regular accounting practices and when certified to the parties, such accounting shall be conclusive and binding upon them. Each of the parties agrees to cooperate with the Accountant and to make available the books, records and other documents in their possession necessary for the preparation of the accounting. The cost of the accounting shall be borne equally between Osserman and Gloger. The continuing partnership of Gloger and Bardey shall

have the right to continue the partnership business and to use Osserman's name for the purpose of collecting accounts receivable and for completing partnership matters in process on July 1, 1970. ^{and reasonable} Appropriate ^{Approved by Gloger and Osserman} notices shall be given of the withdrawal of Osserman and any statutory notices or certificates heretofore filed shall be cancelled or modified as required.

6. Except as set forth in this agreement, Osserman acknowledges that he has no claim whatsoever against Gloger and Bardey, the continuing law partners, or against the partnership business, and that nothing herein shall be construed as a reservation of any claim against any asset of the partnership.

7. Gloger and Osserman hereby agree:

(a) That on or about March 14, 1966, they caused to be organized in New York State Heritable Security Corporation (hereinafter referred to as "Heritable").

(b) That each of ~~Gloger~~, Osserman and Renee K. Gloger, and no others, owned a one-half stock and equity interest in Heritable from the date of its organization until April 1, 1970.

(c) That from the date of Heritable's incorporation until July 1, 1970, each and every one of its acts are

hereby ratified and confirmed, including, but not limited to the election of officers and directors and the distribution of assets.

8. Effective July 1, 1970, Osserman sold and transferred to Gloger *all of* his ~~entire~~ stock and equity interest in Heritable, all his right, title and interest in and to Heritable's assets, including bank balances, accounts receivable, claims, furniture, fixtures, supplies, equipment, library, correspondence, records and books of account.

9. Osserman warrants and represents that he has not contracted any debt or obligation in the name of Heritable, nor collected or discharged any account or claim due Heritable, except as where recorded on the books of Heritable or as set forth in Schedule "A" attached hereto.

10. The books of Heritable are to be closed as of July 1, 1970 and an accounting shall be prepared by *Irving Friedensohn* in accordance with regular accounting practices and when certified to the parties, such accounting shall be conclusive and binding upon them. Each of the parties agrees to cooperate with the Accountant and to make available the books, records and other documents in their possession

necessary for the preparation of the accounting. The cost of the accounting shall be borne equally between Osserman and Heritable.

11. Except as set forth in this agreement, Osserman acknowledges that he has no claim whatsoever against Heritable, and that nothing herein shall be construed as a reservation of any claim against any asset of Heritable.

12. Gloger and Bardey have withdrawn from Medical Management Services Company (hereinafter referred to as "Medical Management") effective July 1, 1970.

13. Effective as of the date of their withdrawal, Gloger and Bardey assigned and transferred to Osserman all their right, title and interest in and to all of the assets of Medical Management, including, but not limited to the leasehold to the premises located at 839 Beacon Street, Boston, Massachusetts, bank balances, accounts receivable, claims, furniture, fixtures, supplies, equipment, library, correspondence, records, books of account and any other Medical Management assets not enumerated herein.

14. Osserman assumes all the debts and obligations of

Medical Management and undertakes to hold Gloger and Bardey harmless from any debt or liability of Medical Management; provided, however, that in the event recovery is had against Medical Management based on an act of negligence, malpractice, breach of fiduciary relationship or conversion, that party adjudged to have committed any of the acts previously enumerated shall save the other two parties and Medical Management harmless.

15. Osserman agrees that the outstanding loan of \$30,000 made by First Israel Bank and Trust Company of New York to Heritable was for the benefit of Osserman individually and Medical Management. Osserman has agreed to pay said loan, together with accrued interest and charges monthly as they fall due and fully, on or before ^{December} ~~September~~ 30, 1970. For the purpose of collateralizing and guaranteeing payment of the said loan, Osserman agrees that in the event that he shall fail to meet the obligations herein set forth with respect to the aforesaid \$30,000. loan, and the bank shall elect to foreclose on the Womig interests assigned to it, Gloger shall have the right to purchase the whole of the Womig collateral, including Osserman's interest therein, by payment to the Bank of the amount sought on said foreclosure. Upon such payment by Gloger, no other act or

deed by Osserman shall be necessary to transfer full ownership of
said Womig interest to Gloger.

16. Gloger and Bardey warrant and represent that they
have not contracted any debt or obligation on behalf of Medical
Management, nor collected or discharged any account or claim due
Medical Management except as either recorded on Medical Management's
books or set forth in Schedule "C" attached hereto.

17. The books of Medical Management are closed as of
July 1, 1970 and an accounting shall be prepared by Stone

in accordance with regular accounting
practices and when certified to the parties, such accounting
shall be conclusive and binding upon them. Each of the parties
agrees to cooperate with the Accountant and to make available
the books, records and other documents in their possession
necessary for the preparation of the accounting. The cost of
the accounting shall be borne equally among Gloger, Osserman,
~~and Bardey,~~

18. Except as set forth in this agreement, Gloger and
Bardey acknowledge that they have no claim against Osserman in
connection with Medical Management or against Medical Management
and that nothing herein shall be construed as a reservation of
any claim against Medical Management.

19. It is specifically understood and agreed that Cinema Verite, Ltd. is excluded from this agreement. The parties, however, ratify and confirm their understanding that each of them shall have an equal interest in the capital stock ^{initially} issued by that corporation *to any of them.*

20. This agreement was entered into in New York State and shall be governed and construed in accordance with the laws of New York State.

21. All claims or disputes arising out of this Contract or the breach thereof shall be decided by arbitration in accordance with the rules of the American Arbitration Association.

22. The parties agree to obtain, prepare, execute and deliver any document, and to take all steps necessary to effect and carry out the terms of this agreement.

23. This agreement represents the entire agreement of the parties and can be changed or modified only by a written agreement executed by all the parties.

24. The accountings herein provided for are intended by the parties to adjust between themselves the income accounts

received by them and each of them - treating Gloger and Osserman as equal partners in Gloger & Osserman, Heritable Security Corporation and Medical Management Services Corporation prior to April 1, 1970, and thereafter, in accordance with the April 1, 1970 agreement executed between Gloger, Osserman and Bardey - which "income accounts", as herein used, shall be construed to include any and all drawing accounts, fringe benefits, expense allowances not reasonably related to properly apportioned, approved and customary business usage and practices, and any other type of benefits. In other respects, the said accountings shall not affect the assumptions by Gloger and Bardey of the obligations of Gloger & Osserman, Gloger, Osserman and Bardey and Heritable Security Corporation, nor the assumption by Osserman of the obligations of Medical Management Services Company. Nothing herein shall affect any personal transaction of any of the parties not related to the businesses herein designated nor otherwise affect the relationships between the parties.

IN WITNESS WHEREOF, the parties hereto have hereunto

Exhibit 2, annexed to Osserman Affidavit
Agreement Dissolving Partnerships Between
Osserman and Gloger

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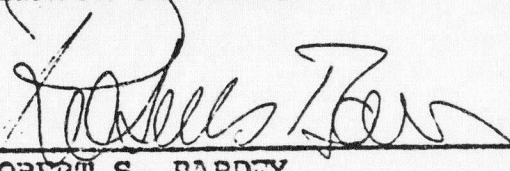
executed this agreement the day and year first above written.



GEORGE M. OSSERMAN



SEYMOUR GLOGER



ROBERT S. BARDEY

Witness as to all 3 signatures

Barton Staben, Esq.

EXHIBIT 3
[Annexed to Osserman Affidavit]

Stone, Leavitt and Shuman, Accountants, Report of
Capital Accounts of Osserman and Gloger

Schedule A-1

MEDICAL MANAGEMENT SERVICES CO.

Schedule of Partners' Capital Accounts
June 30, 1970

(Prepared on a "Cash" Basis-For Management Purposes Only)

	<u>G.M.Osserman</u>	<u>S.Gloger</u>	<u>Total</u>
Capital Balance January 1, 1967 (Per Federal Tax Return)	\$ 4,875	\$ 4,875	\$ 9,750
1967 Net Profit	-0-	-0-	-0-
1967 Drawings	(6,250)	(6,250)	(12,500)
1968 Net Profit	4,516	4,517	9,033
1968 Drawings	(3,522)	(1,700)	(5,222)
1969 Net Loss	(24,127)	(24,127)	(48,254)
1969 Drawings	(19,439)	(3,000)	(22,439)
1970 Net Loss-to June 30, 1970 (Exhibit B)	(31,281)	(31,281)	(62,562)
1970 Drawings-to June 30, 1970	(800)	-	(800)
Balance	(76,028)	(56,966)	(132,994)
Less-Loan Balance	70,041	-	70,041
Balance, June 30, 1970 (Exhibit A)	<u>\$ (5,987)</u>	<u>\$ (56,966)</u>	<u>\$ (62,953)</u>

EXHIBIT 4
[Annexed to Osserman Affidavit]

Defendant's Letter 3/18/71 Demanding Payment of
Balance of Heritable Loan

March 18, 1971

Heritable Security Corporation
500 Fifth Avenue
New York, New York 10036

Dear Sirs:

This is to call to your attention the fact that your note dated February 17, 1971 in the principal amount of \$26,000, which matured yesterday, has not been paid. As we do not want to grant any further renewals, we must ask that the note be paid by the close of business on Monday, March 29, 1971. Unless payment is received by that time, we may sell all or part of the collateral we hold, or take such other steps as we may deem advisable.

We are sending this letter to you - with copies to the guarantors of your loan - without prejudice to our rights and remedies, all of which are expressly reserved. Specifically, but without limitation, this letter is not to be construed as an extension of your note which continues past due.

To be sure that this letter reaches you and the guarantors, it is being sent to all parties by certified mail, return receipt requested.

Very truly yours,

Stuart Weiner
Assistant Vice President

cc: Seymour Cloger
Robert S. Bardey
George Osserman
Medical Management Services Co.

Certified Mail, RRR

1 Copies Received
Date March 7, 1977
Firm Parker, George, Flattum & Kimpl
By D. A. [Signature]